

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

EDWARD LEE GONZALES,

Plaintiff,

v.

PATRICK H. MCDONALD and
ANTHONY GRANTHAM,

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:23-CV-227-MJT-CLS

**MEMORANDUM ORDER OVERRULING
PLAINTIFF'S OBJECTIONS AND ADOPTING THE REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE [Dkt. 122]**

Pursuant to 28 U.S.C. § 636 and the Local Rules of Court for the Assignment of Duties to United States Magistrate Judges, the District Court referred this proceeding to the Honorable Christine L. Stetson to conduct all pretrial proceedings, to enter findings of fact and recommend disposition on case-dispositive matters, and to determine non-dispositive matters. *See* 28 U.S.C. § 636(b)(1); E.D. TEX. LOC. R. CV-72.

On June 14, 2024, Judge Stetson issued a Report and Recommendation [Dkt. 122] with the following conclusions and recommendations: (1) Plaintiff did not meet the clearly established right prong to overcome Defendant McDonald's assertion of qualified immunity, (2) Defendant McDonald was therefore entitled to qualified immunity, meaning (3) Defendant McDonald's Motion for Summary [Dkt. 104] should be granted, and (4) Plaintiff's construed Cross-Motion for Summary Judgment [Dkt. 116] should be denied. Plaintiff filed timely objections [Dkt. 126] on July 2, 2024, but they fail to address the issue of qualified immunity and largely retell Plaintiff's version of events. Additionally, Plaintiff reinvokes his argument that Judge Stetson should have recused herself which has been addressed numerous times by the Court [Dkts. 63,

71 at 3-4, 72], including an order where Plaintiff was informed that such a request should be filed in a separate motion [Dkt. 94 at 2]. Defendant McDonald has not objected.

I. Plaintiffs' Objections to the Report and Recommendation are Overruled

A. Legal Standard

A party who timely files specific, written objections to a magistrate judge's Report and Recommendation is entitled to a *de novo* determination of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2)-(3). To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Frivolous, conclusive or general objections need not be considered by the district court." *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (en banc), *overruled on other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1412 (5th Cir. 1996) (en banc).

B. Discussion

Plaintiff's objections are immaterial to Judge Stetson's finding that he did not sufficiently show Defendant McDonald violated a clearly established right for the purpose of overcoming qualified immunity [Dkt. 122 at 15-16]. After *de novo* review, the Court agrees with Judge Stetson that Defendant McDonald is entitled to qualified immunity from Plaintiff's claims. The Court adopts Judge Stetson's Report and Recommendation [Dkt. 122].

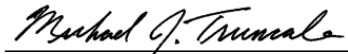
II. Conclusion and Order

The Court has conducted a *de novo* review of Plaintiff's objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, Plaintiff's objections [Dkt. 126] are OVERRULED. The Report and Recommendation of the

United States Magistrate Judge [Dkt. 122] is ADOPTED. Defendant McDonald's Motion for Summary Judgment [Dkt. 104] is GRANTED, and Plaintiff's construed Cross-Motion for Summary Judgment [Dkt. 116] is DENIED. Plaintiff's claims against Defendant McDonald are DISMISSED.

IT IS SO ORDERED.

SIGNED this 15th day of July, 2024.

A handwritten signature in cursive script, reading "Michael J. Truncala", positioned above a horizontal line.

Michael J. Truncala
United States District Judge